GUILD LEADER

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Bumping:

A Painful, Difficult Process

The process of "bumping" in the wake of recent layoffs has been, inevitably, confusing and painful. We hope this newsletter will clear up some of the misconceptions that have resulted by describing how the bumping has occurred and the Guild's role.

When the Journal announced which positions were eliminated, it also identified about ten people that the company said were qualified to "bump" a less-senior employee. The Guild agreed with the company about those individuals because they clearly possessed the skills to perform the jobs of the junior employees.

Several others felt that they, too, were qualified to bump a junior employee. Each of those individuals described why and provided documentation to Guild Administrator Tim Schick. Schick spent over ten hours hearing out each employee and took all those cases to Human Resources Director Tom McDonough. In one case (in the advertising department), McDonough agreed that the person was qualified to bump. He rejected the others.

At that point, the Guild's job was to decide whether to challenge the company before an arbitrator and, if so, which cases to litigate. **In order to win such cases, we have to show that the company's action was arbitrary and irrational. The burden of proof is on the Guild.**

Going to arbitration is not a risk-free endeavor: An arbitrator's decision will set a precedent that we will have to live with for a long time. If it goes against us, similar cases in the future don't stand a chance. A decision not to arbitrate does not set a precedent. And arbitration would result in several months of uncertainty for those who wish to bump and those in danger of being bumped.

It would be irresponsible to take a case to arbitration unless we have a reasonable chance of prevailing.

How did we decide which cases were winnable? The clause governing layoffs, part of our contract since 1960 and never before put to use, gives minimal guidance. It states: "Seniority … shall govern in all cases of layoffs resulting from a staff reduction for economic reasons … provided the senior employee to be retained … is competent to perform the available work."

The key word is "competent." **"Competence" means one's current skills, knowledge and abilities – *not* one's capacity to acquire them.** The contract specifies competence, not aptitude.

Further the contract states "the Publisher shall exercise … the right to determine professional competency…."

Based on the definition of "competent" and our understanding of labor law and practice, we strongly believe that any arbitrator will require that a person seeking to bump into another job have the ability to perform that job now, without more than a general orientation.

Similarly, we do not believe we can win a case for someone who does not meet the company's hiring criteria. For example, except

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for interns, reporters are required to have five years full-time experience before the Journal will hire them. If you don't meet the company's hiring standards, the arbitrator will be hard-pressed to believe you are competent to do that job. Remember, the burden of proof is on us.

We have reviewed our assessments of the contract with our attorney, who concurred with our application of the contract language.

It is true that in the past, the company has transferred people into jobs and then trained them to do those jobs. The company has the right to make such transfers and offer such training when it wants. But nothing compels the company to keep doing that. Nothing in our contract nor in labor law empowers the Guild to say to the company: "You trained person A for this job; therefore you must train person B." It's like merit raises. The company may give merit raises to whomever it wants. But just because the company used to give merit raises, we can't require it to resume giving them or to give them to people we designate. We may wish otherwise, but we simply don't have that power.

The Guild Executive Committee met on Thursday to decide which cases to take to arbitration. (The local's bylaws give this responsibility to the committee. It's decision can be reviewed at the request of the affected member by the entire membership.) We were painfully aware that in each case, whatever decision we made, somebody was going to lose his or her job – that we could not help one member without hurting another. That's why we considered it essential to apply our best interpretation of the contract in an evenhanded way.

The 11 board members spent close to two hours examining each case. We looked at the resumes and clips. We did our best to learn what the jobs entail from the company and from people currently doing them – knowing that the arbitrator will rely on those same sources. We imagined each person on the witness stand during an arbitration hearing. The employee would be asked, "The company says you need to do A, B and C. What evidence do you have that you can do those things?" Would the person be able to provide that evidence?

We agreed on two cases that we felt were winnable (although there are no guarantees). Those cases involve artists who believe they can bump into page designer jobs. Their argument is that they are currently designing pages on a regular basis; they not only have the skills required for the job—they're actually doing the job now. We felt that was a rather strong argument.

The Guild also agreed to arbitrate the company's refusal to maintain the pay levels of people who bump into lower classifications. We believe the contract clearly requires that pay not be cut.

In all the other instances, we decided that we most likely would not prevail if we went to arbitration. By unanimous or near-unanimous votes, the board declined to pursue those cases. It would be wrong to prolong the turmoil for the sake of cases that don't look winnable.

These are perhaps the most challenging days for the Guild, as the company's decisions pit one member against another. The Guild leadership must be impartial and true to the contract, but that is all we can do. We can't bring justice. No matter what we do, jobs will be lost and our friends and colleagues – capable hard-working people, people who don't deserve it -- will be tossed out into the worst economic climate of our lifetimes. It's not fair and we can't stop it. But a glance at the company's irrational firing choices for management should drive home the point that our contract, for all its limitations, is better than nothing. And having each other is better than having no one.